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# REMARKS

The Applicants and the undersigned thank Examiner Juska for her time and consideration given during the telephonic interview of September 7, 2005. The Applicants also appreciate the Examiner's careful review of this application.

The Examiner has imposed a restriction requirement and has made it final. The Applicants have elected with traverse to pursue Claims 1-9 in the current application. Upon entry of this amendment, Claims 7-9 have been cancelled while Claims 1-6 and 10-20 remain pending in this application. Claim 10-20 have been withdrawn from consideration by the Examiner and Claims 1-9 have been rejected.

The independent claims are Claims 1 and 10. Consideration of the present application is respectfully requested in light of the above amendments to the application and in view of the following remarks and the attached Rule 132 Declaration prepared by Hugh Gardner, who is one of the inventors of the claimed technology.

## Summary of Telephonic Interview Conducted on September 7, 2005

The Applicants and the undersigned extend their gratitude to Examiner Juska for the telephonic interview conducted with the Examiner on September 7, 2005. During the telephonic interview, the Applicants' representative and Examiner Juska discussed the state of the prior art that was used to reject the currently pending U.S. patent claims and a proposed amendment that was sent to Examiner Juska in advance of the interview.

The Applicants' representative explained that the carpet backing according to one exemplary embodiment of the invention is a secondary carpet backing and that the flat weave comprises a plain weave type of fabric. The Examiner indicated that the combination of elements now presented in independent Claim 1 would likely overcome U.S. Pat. No. 6,435,220 issued in the name of Smith et al. (hereinafter, the "Smith '220 reference") and the alleged prior art noted in the Applicants' background section. See paragraphs 12 and 13 of the June 2, 2005 Office Action.

However, Examiner Juska did not believe that the proposed amendment would overcome U.S. Pat. No. 6,060,145 issued in the name of Smith et al. (hereinafter, the "Smith '145 reference"). Examiner Juska indicated that the Smith '145 reference teaches

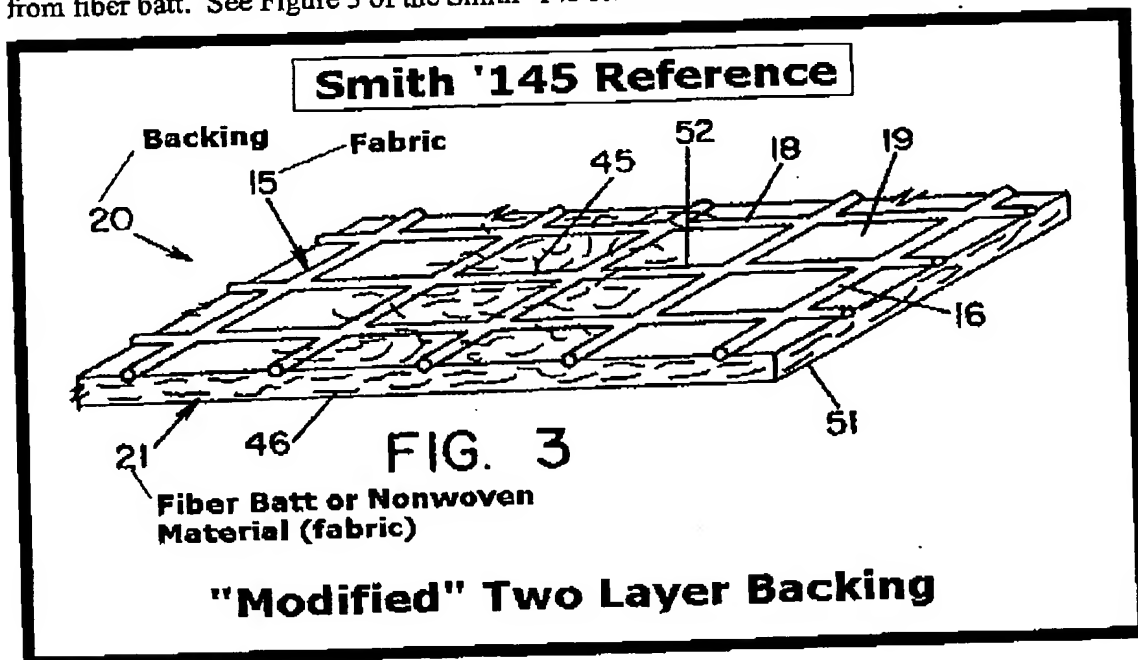
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a secondary backing and in one embodiment, this secondary backing may include a plain weave fabric.

The Applicants' representative then asked Examiner Juska if evidence such as unexpected results may persuade the Examiner that the claimed combination is unobvious. Examiner Juska indicated that a Rule 132 declaration of unexpected results may help in the prosecution of this case.

After the telephonic interview, the Applicants' representative sent another proposed amendment in which the word, "comprising," of Claim 1 would be replaced with the phrase, "consisting essentially of." Also, the proposed amendment also contained an amendment in which the secondary backing of the claimed technology would be limited to a single layer.

The Applicants' representative presented these additional proposed amendments because it was discovered that the secondary backing of the Smith '145 reference has at least two layers. Specifically, the Smith '145 reference in column 8, lines 46-52, describes a "**modified**" secondary backing indicated by reference numeral 20 in Figure 3 that comprises an integrated scrim formed by joining a conventional woven secondary backing fabric 15 with a layer of fiber batt 21 or nonwoven material (fabric) prepared from fiber batt. See Figure 3 of the Smith '145 reference illustrated below.



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After considering the Applicants' second proposed claim amendment, Examiner Juska did not believe that limiting the claimed invention to a single layer or using the language "consisting essentially of" would overcome the modified two layer secondary backing of the Smith '145 reference.

The Applicants and the undersigned request Examiner Juska to review this interview summary and to approve it by writing "Interview Record OK" along with her initials and the date next to this summary in the margin as discussed in MPEP § 713.04, p. 700-202.

The Applicants note that the claims as presented in this formal response have been amended to recite a flat weave construction comprising (1) a plain weave and (2) that this plain weave comprises a single layer and that (3) the secondary backing increases at least one of dimensional stability and delamination resistance of a carpet with the secondary backing.

#### Election/Restriction Requirement

The Applicants acknowledge the finality of the restriction requirement. Claims 1-9 have been elected with traverse while Claims 10-20 stand withdrawn from consideration by the Examiner. If Examiner Juska finds independent Claim 1 to be allowable over the prior art of record in view of the current amendment, Examiner Juska is invited to contact the undersigned in order to discuss if canceling the non-elected claims would be appropriate action for the Applicants to advance the prosecution of this patent application.

#### Double Patenting Rejection

The Examiner provisionally rejected Claims 1-8 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 1-8 of co-pending and commonly owned U.S. Application Serial No. 10/293,119. This rejection is respectfully traversed.

In response to this rejection, the Applicants are filing a terminal disclaimer signed by the Applicants' representative. Accordingly, reconsideration and withdrawal of this rejection are respectfully requested.

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Claim Rejections under 35 U.S.C. § 112, Second Paragraph

The Examiner rejected Claims 1 and 7 under 35 U.S.C. § second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the Applicants regard as the invention. This rejection is respectfully traversed.

In order to advance prosecution of this patent application, the Applicants have cancelled dependent Claim 7 without prejudice or disclaimer of the subject matter contained therein. This cancellation has rendered the Examiner's rejection of Claim 7 as moot. Accordingly, reconsideration and withdrawal of this rejection are respectfully requested.

Claim Rejections under 35 U.S.C. § 102 and 103

The Examiner rejected Claims 1-7 under 35 U.S.C. § 102(e) as being anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as being obvious over the Smith '220 reference. The Examiner also rejected Claims 1-7 under 35 U.S.C. § 103(a) as being obvious over the Applicants' background section of the current application. The Examiner also rejected Claims 1-9 under 35 U.S.C. § 103(a) as being obvious over the Smith '145 reference.

These rejections are respectfully traversed.

Independent Claim 1

It is respectfully submitted that the Smith '220 and Smith '145 references and the Applicants' alleged prior art fail to describe, teach, or suggest the combination of elements for a secondary carpet backing that comprise (1) a woven fabric having (2) a flat weave construction of warp tapes and multifilament picks with (3) an average of about 12 to about 24 warp tapes per inch (4) providing 50 to about 100% theoretical warp coverage (5) but less than full effective warp coverage and (6) with an average of about 10 to about 20 multifilament picks per inch, the flat weave construction comprising (7) a plain weave of (8) a single layer such that the fabric has a (9) weight of about 1.5 to about 7 osy and (10) average air permeability of at least about 250 ft<sup>3</sup>/min./ft.<sup>2</sup>, determined according to ASTM D-737 (11) with a pressure differential equal to 0.5 inch water, the

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secondary carpet backing (12) increasing at least one of (12a) dimensional stability and (12b) delamination resistance of a carpet with the secondary carpet backing, as recited in amended independent Claim 1.

#### The Smith '220 Reference

The Smith '220 reference describes a primary, as opposed to a secondary, woven carpet backing. The woven carpet backing comprises monofilament warp yarns and alternating multifilament and monofilament fill yarns. The woven carpet backing is woven using a weave, preferably a non-traditional weave, that places substantially all of the multifilament fill yarns on one side of the carpet backing and substantially all of the monofilament fill yarns on the other side of the carpet backing. Smith '220 reference, column 2, lines 8-20.

The Smith '220 reference describes plain weave as traditional in the background section listed in column 1, lines 22-25. Therefore, the Smith '220 reference does not provide any teaching of a secondary carpet backing with a flat weave construction comprising a plain weave because the weaves of the Smith '220 reference are of a "non-traditional" type.

Examiner Juska agreed during the telephonic interview of September 7, 2005 that the Applicant's amendment that included a flat weave construction comprising a plain weave overcomes the Smith '220 reference.

#### The Applicants' Alleged Admitted Prior Art

The Examiner alleges that paragraphs [0006] and [0007] of the published application that describe open, leno weaves render the secondary carpet backing of the claimed invention as obvious. However, amended Claim 1 now describes a flat weave construction comprising a plain weave.

#### The Smith '145 Reference

As discussed above in the interview summary section, the Smith '145 reference describes a secondary backing that has at least two layers. Specifically, the Smith '145 reference in column 8, lines 46-52, describes a "modified" secondary backing indicated

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by reference numeral 20 in Figure 3 (illustrated above) that comprises an integrated scrim formed by joining a conventional woven secondary backing fabric 15 with a layer of fiber batt 21 or nonwoven material (fabric) prepared from fiber batt.

One of ordinary skill in the art recognizes that a "modified" secondary backing made from two layers cannot anticipate or render obvious a secondary backing that comprises only a single layer. In addition to this single layer distinction, the Applicants further submit that the claimed combination of elements yields unexpected results.

As set forth in paragraph 19 the attached Rule 132 Declaration authored by one of the inventors (Hugh C. Gardner), it is noted that paragraph [0014] on page 2 of the Published Application clearly describes the unexpected results of the claimed combination: "Surprisingly, although the flat nature of the woven backings according to the invention provides less surface, texture and apparent openness than leno weave fabrics constructed from similar yarns in similar average counts, dimensional stability and delamination resistance in finished carpets prepared therefrom are comparable or superior to those of carpets made with currently favored leno backings." Specifically, as evidenced by Tables 6 and 7 of the Published Application, the secondary backing of the claimed invention provides delamination resistance that is superior to those of carpets made with conventional leno backings. See paragraph 19 of the attached Rule 132 Declaration.

#### Summary for Independent Claim 1

In light of the differences between amended Claim 1 and the Smith '145, Smith '220, and Applicants' Alleged Admitted Prior Art and in view of the unexpected results discussed above and described in the attached Rule 132 Declaration, one of ordinary skill in the art recognizes that the broadest, reasonable interpretation of these references cannot anticipate or render obvious the recitations as set forth in amended independent Claim 1. Accordingly, consideration and an indication that amended Claim 1 is allowable over the prior art are respectfully requested.

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Dependent Claims 2-6

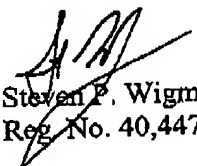
These dependent claims should be allowable because their corresponding independent claim should be allowable over the prior art of record. Consideration and an early notice of allowance are courteously solicited from the Examiner.

CONCLUSION

The foregoing is submitted as a full and complete response to the Office Action mailed on June 2, 2005. The Applicants and the undersigned thank Examiner Juska for the consideration of these remarks. The Applicants have submitted remarks to traverse the pending rejections and to identify the differences between Claims 1-6 and the prior art. The Applicants respectfully submit that the present application is in condition for allowance. Such Action is hereby courteously solicited.

If any issues remain that may be resolved by telephone, the Examiner is requested to call the undersigned at 404.572.2884.

Respectfully submitted,

  
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